IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re:	*	
FRANK'S NURSERY & CRAFTS, INC., et al.,	*	Case Nos. 01-52415-JS through 01-52416-JS
Debtors.	*	(Chapter 11)
	*	(Jointly Administered)

* * * * * * * * * * * * *

OBJECTION OF SECURED CREDITOR TO INTERIM ORDER PURSUANT TO SECTIONS 105, 107, 362 AND 364 OF THE BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AUTHORIZING DEBTORS (1) TO OBTAIN INTERIM FINANCING, (2) GRANTING SENIOR LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (3) MODIFYING THE AUTOMATIC STAY AND (4) AUTHORIZING DEBTORS TO ENTER INTO AGREEMENTS WITH WELLS FARGO RETAIL FINANCE, LLC ("ORDER") AND MOTION FOR ADEQUATE PROTECTION, FOR CONTINUANCE OF MARCH 6 HEARING, AND FOR ENTRY OF AN ORDER DIRECTING DEBTOR TO FURNISH BUSINESS PLAN WITHOUT REQUIRING EXECUTION OF CONFIDENTIALITY AGREEMENT

Comes now Prudential Securities Secured Financing Corporation, Commercial Pass-Through Certificates, Series 1998-C1 Trust, a trust created under the laws of the State of New ("Trust") and objects to the Order, and in support thereof, and also in support of its related motions described in the caption, states as follows:

Introduction

1. The Trust is the holder of a first mortgage lien on real estate owned by the Debtor located in Huntington, New York. The mortgage secures payment of a Promissory Note in the original principal amount of $1,625,000.00 ("Note"). The Debtor is in default under the Note and Mortgage. The Debtor has not made any offer of adequate protection to the Trust, but

41

worse, the Order constitutes in numerous respects an actual erosion of adequate protection and a deprivation of rights and property of the Trust without due process of law.

2. The Order was entered without adequate or fair notice and opportunity to object. The volume, complexity, and sophistication of the pleadings filed at the commencement of the case shows that there was a great deal of prepetition planning. However, in that clearly massive planning process there was obviously no meaningful consideration given to providing proper notice to creditors of the preliminary hearing on the DIP financing. Notice was given by overnight express mail, which did not arrive in the offices of the Trust's servicer until after the hearing was over. More notice could and should have been given, especially before important legal rights were simply taken away or infringed upon as discussed in detail below.

3. As a preliminary matter, The Trust and other creditors are unable to intelligently evaluate and object, if appropriate, to the allegations in the Debtor's DIP Motion and the findings and provisions in the Order without having a fair opportunity to examine and analyze the Debtor's Business Plan. The Trust has been trying to obtain the Business Plan since Saturday, February 25 but has been unable to do so. The obstacles the Order imposes to obtaining the Business Plan are unjustified and prevent a rational analysis by the Trust and other creditors of the Debtor's financial and operational situation and the proposed DIP financing. To obtain the Business Plan, one must negotiate a "Confidentiality Agreement" with the Debtor or obtain authorization from the Court to obtain the Business Plan, an unwieldy, expensive, and time consuming process, especially when facing a deadline of Friday, March 2 **(at noon)** to file an objection to the Order and a hearing on Tuesday, March 6.

Counsel for the Trust was provided a copy of the proposed Confidentiality Agreement on Wednesday, February 28. The Agreement, a copy of which is attached as Exhibit A, provides

that the information in the Business Plan can be used "for the sole purpose (the "Permitted Purpose") of determining whether and on what terms to extend trade credit to Debtor." This is an unwarranted and improper restriction on the Trust's right to information necessary, in its capacity as secured creditor in the case, to participate in the case generally and, specifically, to attempt to protect its interests in connection with the Order. Without timely access to the Business Plan, the Trust cannot adequately understand the terms of or the necessity for the DIP financing or prepare for the March 6 hearing.

4. The Order effectively delegates the Court's authority under Section 107 of the Code to the Debtor. The Court should withdraw this delegation and impose only limited, reasonable restrictions, if any, to the use of the information in the Business Plan.

5. One of the most objectionable features of the Order is the grant to the DIP Lender of a superpriority administrative expense ahead of every other administrative expense in the case except $2,000,000 in Professional Fees (Section 18). The Trust and other similarly situated lenders may eventually have administrative claims for "failed adequate protection." Normally, these claims would be entitled to superpriority status under § 507(b) of the Code.[1] However, the Order overrides 507(b) and, without adequate notice, unfairly and improperly elevates the interests of the DIP lender over other administrative claimants including 507(b) claimants. The collateral obtained by the DIP lender should be more than sufficient to cover the DIP lender. A

[1] Section 507(b) provides: If the trustee, under § 362, 363, or 364 of this title, provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(1) of this section arising from the stay of action against such property under § 362 of this title, from the use, sale, or lease of such property under § 363 of this title, or from the granting of a lien under § 364(d) of this title, then such creditor's claim under such subsection shall have priority over every other claim under such subsection.

superpriority administrative expense is unnecessary, especially where it unduly interferes with the rights of other creditors.

6. The purported renunciation in the Order of a security interest in the Debtor's avoidance actions is 100% illusory in view of the superpriority administrative expense, which, by indirection, provides the DIP lender with a right that is at least as valuable as a security interest in the avoidance actions. It is not necessary to observe the formality of obtaining a "security interest" in the avoidance actions (a security interest, after all, being nothing more than a device for obtaining priority) when the superpriority administrative expense confers the same priority by other means.

7. Moreover, Section 18 does not stop at administrative expenses but purports to give the DIP Lender priority "over all rights of set-off recognized under the Bankruptcy Code." This "priming" of other lenders' secured set-off claims is tacked on to the end of the administrative expense priority as if it belonged there when it is actually a separate, special, and gross infringement of the rights of other secured creditors that is recognized under the Bankruptcy Code.

8. Equally unfairly and improperly, the "Carve Out" provisions of the Order elevate the interests of the Professionals in the case over the interests of other actual and potential administrative claimants, including even §507(b) claimants. The Code grants §507(b) claimants a priority over all other administrative claims, including Professionals; that status cannot be directly or indirectly defeated by the Order. Moreover, fees paid to Professionals are subject to disgorgement if not all administrative expenses in the case are paid so that administrative expense claimants may fairly share whatever is available to pay them on a pro rata basis. However, the Order attempts an "end run" around §507(b) by unfairly creating an undeserved

right in the DIP lender, then assigning that right to the extent of $2,000,000 exclusively for the Professionals. While the proper solution is to deny the DIP lender the superpriority, if that does not occur, it should at least be made clear that the Carve Out fund is for the benefit of all administrative claimants in the case, not just the Professionals. See In re Kids Creek Partners, L.P., 200 F.3d 1070 (7th Cir. 2000); In re Kids Creek Partners, L.P., 219 B.R. 1020 (Bankr.N.D.Ill. 1998); In re Kids Creek Partners, L.P., 233 B.R. 409 (Bankr.N.D.Ill. 1999); In re Kids Creek Partners, L.P., 236 B.R. 871 (Bankr.N.D.Ill. 1999); Matz v. Hoseman, 197 B.R. 635 (Bankr.N.D.Ill. 1996); United States Trustee v. Johnston, 189 B.R. 676 (Bankr.N.D.Miss. 1995); Metropolitan Electric Supply Corp. v. Durrette, Irvin, Lemons & Bradshaw P.C., 185 B.R. 505 (Bankr.E.D.Va. 1995); In re Lochmiller Industries, Inc., 178 B.R. 241 (Bankr.S.D.Cal. 1995); In re Kingston Turf Farms, Inc., 176 B.R. 308 (Bankr.D.R.I. 1995); Guinee v. Toombs (In re Kearing), 170 B.R. 1 (Bankr.D.C. 1994).

9. The Order infringes on the rights of secured lenders not included in the favored group in other respects as well. While it is customary for DIP lenders to impose certain advantages for themselves, this Order improperly impairs, restricts and interferes with the contractual rights of other secured creditors for the benefit of the DIP lender, without affording those creditors due process.

10. For example, the Order gives the DIP lender a second mortgage on various properties, including the Trust's collateral, notwithstanding provisions of the Trust's loan documents prohibiting further encumbrance. Absent the judicial protection afforded by the Order, such action would arguably amount to a tortious interference with the contractual rights of third parties. The importance of this restriction to lenders and the inequity of this grant is clearly demonstrated by the very provisions in the Order that prevent the Debtor from incurring any

secondary financing or further encumbrance on collateral on which the DIP lender holds a first lien.

11. The Order contains other several other provisions that unjustifiably infringe upon the rights of other creditors, including the Trust. For example, Section 23(a) of the Order interferes with the rights of the Trust as a first mortgage holder to foreclose on its property, even after a lifting of the §362 stay. This provision literally turns the lending world upside down. As a second mortgage holder, the DIP lender, who has obtained the second mortgage in violation of the provisions of the first mortgage, prohibits the first mortgage holder from exercising its rights outside of bankruptcy! The Trust and other first mortgage holders should have to deal only with the stay relief provisions of § 362 of the Code, not additional overreaching restrictions imposed by the Order.

12. Continuing, Section 25 states that "there shall not at any time be entered in Debtors' Chapter 11 cases any order which (a) authorizes . . . the sale . . . of property in which the Agent and Lender have a lien or security interest." Again, this trespassing second mortgage holder, imposed on the Trust without consent, reverses the priorities de facto by placing itself in a position to extort concessions from the first mortgage holder through the power granted in the Order to prevent a sale that would not benefit the second mortgage holder.

13. Continuing, Section 28 of the Order purports to be "binding upon" all creditors of Debtors and other parties in interest, including, without limitation, all Landlords and holders of Permitted Mortgages.

14. The finding of "good faith" on the part of the DIP Lender is not justified with respect to the overreaching provisions discussed above as applied to the Trust and in view of the

inadequate notice of the preliminary hearing when the Debtor's filing was obviously planned many days, if not weeks, ahead of time.

15. The proposed payment in full of the prepetition debt to Chase may turn out to be appropriate but, given the limited disclosures, the Trust asserts a conditional objection to that provision of the Order pending additional disclosures and the final hearing.

16. The Order does not contain the required finding under Rule 4001 (c) (2) that any credit obtained prior to the final hearing be necessary to avoid immediate and irreparable harm to the estate.

17. Lender reserves the right to assert additional objections and hereby incorporates by reference any other objections to the Order made by other parties in interest.

WHEREFORE, the Trust requests that the Court (1) refuse to enter the Order as a final Order under Rule 4001 and that the Interim Order be rescinded unless all provisions are removed that alter the rights under bankruptcy and applicable nonbankruptcy law of the Trust in relation to the DIP lenders and the Professionals in the case, (2) provide the Trust adequate protection in connection with the Order and the DIP financing, (3) order the Debtor to promptly provide to interested creditors all relevant documents including the DIP Loan Documents and the Business Plan and continue the March 6 hearing to a later date that gives interested creditors an opportunity to obtain and properly analyze the documents and prepare direct testimony and cross examination for the final hearing, and (4) order the Debtor to provide the Business Plan to the Trust subject to such limited and reasonable confidentiality restrictions as the Court may impose under the Order.

POLSINELLI SHALTON & WELTE
A PROFESSIONAL CORPORATION

By: _____

Daniel J. Flanigan
Brett D. Anders
700 West 47th Street, Suite 1000
Kansas City, Missouri 64112
(816) 753-1000
Fax No. (816) 753-1536

BLANK ROME COMISKY & MCCAULEY, L.L.P.

By: _____

Leslie J. Polt (Fed. Bar #05268)
250 West Pratt Street, Suite 1100
Baltimore, Maryland 21201
(410) 659-1400
Fax No.: (410) 659-1414

ATTORNEYS FOR LENDER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection Of Secured Creditor To Interim Order Pursuant To Sections 105, 107, 362 And 364 Of The Bankruptcy Code And Rule 4001 Of The Federal Rules Of Bankruptcy Procedure Authorizing Debtors (1) To Obtain Interim Financing, (2) Granting Senior Liens And Superpriority Administrative Expense Status, (3) Modifying The Automatic Stay And (4) Authorizing Debtors To Enter Into Agreements With Wells Fargo Retail Finance, LLC ("Order") And Motion For Adequate Protection, For Continuance Of March 6 Hearing, And For Entry Of An Order Directing Debtor To Furnish Business Plan Without Requiring Execution Of Confidentiality Agreement by hand-delivery to the following:

Office of the U.S. Trustee
300 West Pratt Street, Suite 350
Baltimore, MD 21201

Martin T. Fletcher, Esq.
Whiteford, Taylor & Preston, LLP
7 St. Paul Street, Suite 1400
Baltimore, MD 21201

Nancy V. Alquist, Esq.
Ballard, Spahr, Andrews & Ingersoll
300 East Lombard Street, 19th Floor
Baltimore, MD 21202

and by regular mail, postage prepaid to the attached distribution list this 2nd day of March, 2001.

Leslie J. Polt

DISTRIBUTION LIST

Andrew M. Troop
Christopher R. Mirick
Hutchins, Wheeler & Dittmar
A Professional Corporation
101 Federal Street
Boston, MA 02110

Lori S. Simpson, Esquire
Two North Charles Street
Suite 500
Baltimore, MD 21201

Federal Construction, Inc.
c/o Eric D. Schwartz, Esquire
Morris, Nochols, Arsht & Tunnell
18th Floor
1201 North Market Street
Wilmington, DE 19801

Frank Smith & Sons
876 Indian Trails Road
Carleton, Michigan 48117
Atten: Allan Smith

Combined Properties, Inc.
c/o Daniel P. Rigertink, Esquire
7315 Wisconsin Avenue
Suite 800W
Bethesda, MD 20814

David Daneman, esquire
Two North Charles Street
Suite 500
Baltimore, MD 21201

Serge Brunner
The Espoma Company
Six Espoma Road
Millville, NJ 08332

Alan M. Grochal, Esquire
Tydings, & Rosenberg LLP
100 East Pratt Street
Baltimore, MD 21202

Joel I. Sher, Esquire
Shapiro Sher & Guinot
36 S. Charles Street, Suite 2000
Baltimore, MD 21201

Patrician Prods., Inc.
c/o Larry I. Glick, Esquire
1305 Franklin Avenue, Suite 180
Garden City, NY 11530

Bill Kaye
F&D Reports
310 E. Shore Road
Great Neck, New York 11023

Woodstream Corp.
c/o Brian W. Bisignani, Esquire
Duane, Morris & Heckscher, LLP
305 North Front Street
Fifth Floor
Harrisburg, PA 17108-1003

Frankwood Management Co.
c/o Earle I. Erman, Esquire
Erman, Teicher, Miller, Zucker & Freedman, PC
100 Galleria Officentre, Suite 333
Southfield, MI 48034

Vicgar Limited Partnership
c/o Elyse Vinitsky, Esquire
Suite 105
4801 Hampden Lane
Bethesda, MD 20814

Wells Fargo Retail Finance, LLC
One Boston Place
18th Floor
Boston, MA 02108

Thomas D. Renda, Esquire
Siskand, Grady, Rosen, Hoover & Levin, PA
Two East Fayette Street
Baltimore, MD 21202

Evan C. Hollander, Esquire
White & Case LLP
1155 Avenue of the Americas
New York, New York 10036

Bankers Trust Company
Attn: Asante Denis
Four Albany Street
Fourth Floor
New York, NY 10006

1-Boto Company Ltd.
Attn: Michael Kao
17/F Eight Commercial Tower
8 Sun VIP St.
Chaiwan Hong Kong

Burpee Garden Products Co.
Attn: Fred Hobson
300 Park Avenue
Warminster, PA 18974

Gary Products Group Inc.
Attn: Sylvia Rena
2601 SE Loop 289
Lubbock, TX 79404

American Oak Preserving Co. Inc.
Attn: Mary
601 Mulberry Street
North Judson, IN 46366

K. Van Bourgondien & Sons, Inc.
Attn: Linda Williams
P.O. Box A, Route 109
Babbylon, NY 11702

NK Lawn & Garden Co.
Attn: Stacy Deabler
P.O. Box 24028
Chattanooga, TN 37422-4028

Cluett Corp.
Attn: Phil Matthews
P.O. Box 6666
Tyler, TX 75711

I-Raymond Steve & Bros. Development
Attn: Steve Tsui
St. 600 Tower A. Hunghom
39 Matauwei Rd.
HungHom, Kowloon

Hermann Englemann Grnhse. Inc.
Attn: Sandra Kitain
2009 Marden Rd.
Apopka, FL 32704

Lake Valley Seed
5717 Arapahoe
Boulder, CO 80303-1338

Fiskars Group
636 Science Drive
Madison, WI 53711

C.M. Offray & Son, Inc.
Attn: Jenny
858 Willow Circle
Hagerstown, MD 21740

Valfei Products
AttN: Sylvai Vaillancourt
P.O. Box 185
Norton, VT 05907

Graphic Communications
Attn: Brian Brazell
P.O. Box 54120
Los Angeles, CA 90054-0120

Wilson Enterprises
Attn: Kathy Wilson
P.O. Box 4, U.S. Hwy 2 & 41
Wilson, MI 49896

Easy Gardner
P.O. Box 21025
Waco, TX 76702-1025

The Washington Post
Attn: Royston DeSouza
P.O. Box A200
Washington, D.C. 20071

Variety Accessories, Inc.
Attn: Mike
P.O. Box 4528
Great Neck, NY 11027

Great Lakes Craft & Hobby Dist.
Attn: Tom or Steve
46660 Van Dyke
Shelby Township, MI 48317

Angel Plants, Inc.
Attn: Jack
560 Deer Park Avenue
Dix Hills, NY 11746

Nolan & Cummings
Attn: John
P.O. Box 2111
Warren, MI 48090-2111

Happy Holiday Xmas
Trees/Color Spot
Attn: Jeannie
3819 E. Sidney Rd.
Sheridan, MI 48884

Polytree
25/F CCT Telecom Bldg.
11 Wo Shing Street
Fo Tan Shatin, N.T. Hong Kong

Kirk Company
Attn: Tom Thomas
201 St. Helens Ave.
Tacoma, Wa 98402-2519

Teufel Holly Farms
Attn: John Coulter
160 S.W. Miller Rd.
Portland, OR 97225

Artfaire/CPS Corporation
Attn: Sarah
1715 Columbia Hwy P.O. Box 68-1000
Franklin, TN 37068

Davie Boag
H.K. Int'l Trade & Exhibit Ctr.
1 Trademart Drive, Wang Ching St.
Rm No. 1001-1011, 10th Floor
Kowloon, Hong Kong

People's Bank
850 Main Street
Bridgeport, CT 06604-4913

IBM Credit
1 North Castle Drive
Armonk, NY 10504-2575

Hilco Merchant Resources, LLC
Attn: Cory Lipoff
5 Revere Drive, Suite 206
Northbrook, IL 60062

Latham & Walkins
Attn: Josef S. Athanas
Counsel for Hilco
Sears Tower, Suite 5800
Chicago, IL 60606

I.C.Y. Hung Co. Ltd.
Attn: Tony Hong
11 F/Telford House 16 Wang Hoi Road
Kowloon Bay, Kowloon

LMA Capital Group, LLC
2000 Powell Street, Suite 1203
Emeryville, CA 94608

CIT Group/ Equipment Financing, Inc.
900 Ashwood Parkway
Atlanta, GA 30338

G/S Leasing, Inc.
3290 W. Big Beaver Rd., Ste. 200
Troy, MI 48084

First Union National Bank of North Carolina
Tower 8
One First Union Center
Charlotte, NC 28288

State Street Bank and Trust Company
2 Avenue de Lafayette
Boston, MA 02111-1724
Attn: Decker Adams

Forsythe/McArthur Associations, Inc.
7500 Frontage Road
Skokie, IL 60077

Newcourt Technologies Corporation, f/k/a
AT&T Systems Leasing Corporation
2285 Franklin Road, 2nd Floor
Bloomfield Hills, MI 48302

Wilson Wreath Co. Ltd. &
KeyBank NA
Attn: Marleta
480 Main Street
Presque Isle, ME 04769

Greg A. Nickell
c/o Morrison & Hecker, LLP
2600 Grand Avenue
Kansas City, MO 64108

Tompkins
1040 W. Grand Blvd.
Detroit, MI 48208

National Realy
911 Main Street
Kansas City, MO 64105

Resource Leasing
397 Herndon Parkway, Suite 5
Herndon, VA 20170

Sanwa Leasing Corp.
P.O. Box 7023
Troy, MI 48007-7023

Comptroller of the Treasury
Sales & Use Tax Div. - Claims
301 West Preston Street
Baltimore, MD 21201

MD Unemployment Insurance
Admin.
1100 N. Eutaw Street, #401
Baltimore, MD 21202

KC Funding Corp.
210 West Tenth Street, Sixth
Floor
Kansas City, MO 64105

Midland Commercial Financing
Corp.
210 West Tenth Street, Sixth
Floor
Kansas City, MD 64105

LaSalle National Bank
135 S. LaSalle Street
Chicago, IL 60603

Comptroller of the Treasury
Income Tax Div. - Legal Unit
Income Tax Building
110 Carroll Street
Annapols, MD 21411

Siemens Credit Corporation
991 US Highway Route 22 West
Suite 300
Bridgewater, NJ

Atlas Auto Leasing, Inc.
39935 Grand River
Novi, MI 48375

Steelcase Financial
Administrative Center
475 Sansome Street, 19th Fl.
San Francisco, CA 94111

Alan Lipkin, esq.
Wilkie, Farr & Gallagher
787 Seventh Avenue
New York, NY 10019-6009

U.S. Attorney
U.S. Courthouse
101 West Lombard Street
Baltimore, MD 21201

Internal Revenue Service
Special Procedures Branch
31 Hopkins Plaza, Room 1140
Baltimore, MD 21201

Securities and Exchange
Commission
450 Fifth Street NW
Washington, D.C. 20549

Gregory A. Cross, Esq.
Venable Baetjer
1800 Mercantile Bank & Trust
Building
2 Hopkins Plaza, suite 1800
Baltimore, MD 21201

Peter M. Palladino, Douglas R.
Gooding, John F. Ventola
Choate, Hall & Stewart
Exchange Place, 53 State Street
Boston, MA 02109

Easy Gardner
1750 17th Street
Paris, KY 40361-1160

Daniel Flanigan, Esquire
Polsinelli, Shalton, Welte
1000 Plaza Steppes Bldg.
700 West 47th Street
Kansas City, MO 64112-1802

CONFIDENTIALITY AGREEMENT

This Agreement (the "Agreement") is made and entered into this 28th day of February 2001, by and between Frank's Nursery and Crafts, Inc. ("Frank's") and FNC Holdings, Inc. (together with Frank's, the "Debtors"), debtors in possession, and Polsinelli, Shalton, Welte ("Receiving Party").

1. Receiving Party is a party in interest in the Debtors' jointly administered chapter 11 cases pending in the United States Bankruptcy Court for the District of Maryland (the "Court"), Case Nos. 01-52415 (JS) and 01-52416 (JS), and desires to have access to certain confidential and proprietary information of or relating to the Debtors and filed with the Court under seal in connection with the Debtors' motion (the "Motion") for approval of interim and final Debtor-in-Possession financing (the "Confidential Information"). Receiving Party represents that it is not a competitor of the Debtors and will use the Confidential Information for the sole purpose (the "Permitted Purpose") of determining whether and or what terms to extend trade credit to Debtor.

2. Receiving Party agrees that the Confidential Information will be utilized by the Receiving Party and its directors, officers, employees, affiliates, accountants, financial advisors or attorneys (collectively, the "Representatives") solely for the Permitted Purpose.

3. Receiving Party agrees that all Confidential Information will be kept confidential by Receiving Party and its Representatives and will not be used for any purpose other than the Permitted Purpose and may not be disclosed to any other person or entity, except: (a) as required by law, legal process, or request of a regulatory agency or governmental authority with jurisdiction over the Receiving Party or its Representative; provided, however, that Receiving Party provides the Debtors with notice of such request in accordance with paragraph 8 hereof, or as otherwise provided herein; or (b) to Representatives who: (i) Receiving Party reasonably believes have a need to know such information for the purposes permitted herein; and (ii) have previously agreed to be or are bound by the terms and conditions applicable to Receiving Party under this Agreement.

4. Receiving Party agrees and represents to the Debtors that prior to any of its Representatives being given access to the Confidential Information, such Representatives will agree to be bound by the terms of this Agreement as a "Receiving Party."

5. Receiving Party understands that due to its receipt of the Confidential Information, it may be deemed to be in possession of material nonpublic information relating to the Debtors and their public debt securities. Receiving Party represents that it has implemented and will comply with procedures to ensure that neither it nor any individuals making investment decisions on its behalf, would violate state or federal securities laws as well as international securities laws with respect to the offer, sale or resale of securities issued by the Debtors.

6. Receiving Party hereby acknowledges that it is aware, and that it and its respective Representatives who are informed as to the matters which are the subject of this letter or who receive Confidential Information or any part thereof are or will be made aware, of United States securities laws regarding material nonpublic information.

860743.1

7. Except to the extent required by law (and then only after prior notice to and consultation with the Debtors), no Receiving Party or its Representatives will, without the prior written consent of the Debtors, disclose to any person any Confidential Information.

8. If the Receiving Party or any of its Representatives becomes required by law or applicable legal process (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information furnished by the Debtors, Receiving Party shall give the Debtors prompt prior written notice of such requirement, in no event more than two business days after Receiving Party's receipt of notice thereof, so that the Debtors may seek an appropriate protective order or other remedy, or waive compliance with the terms of this Agreement.

9. It is understood and agreed that the Debtors and their respective employees, agents, advisors and representatives make no representations or warranties, express or implied, with respect thereto concerning the quality, accuracy or completeness of the Confidential Information.

10. Receiving Party acknowledges that any violation of this Agreement may cause the Debtors immediate and irreparable harm that monetary damages cannot adequately remedy, and Receiving Party agrees that, upon any actual or impending violation of this Agreement, the Debtors shall be entitled to equitable relief, including injunctive relief and specific performance, without bond or proof of damages, and in addition to any other remedies that the Debtors may have under applicable law. The obligation of the Receiving Party not to discuss the Confidential Information shall not apply in the event the Debtors have previously publicly disclosed all or part of such information, to the extent of such public disclosure.

11. The rights and obligations arising under this Agreement are personal in nature and shall not be assigned or transferred by Receiving Party. This Agreement constitutes the entire understanding of the parties hereto and supersedes and replaces any oral or written communication heretofore made between the parties relating to the subject matter hereof. This Agreement may not be modified or changed except by written consent executed by all parties hereto.

860743.1

12. This Agreement: (i) shall be binding upon each of the parties hereto, and their respective successors; (ii) shall insure to the benefit of each of their respective successors; and (iii) shall be governed and construed in accordance with the laws of the State of New York, as may be supplemented or superseded by applicable United States bankruptcy law.

13. This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which shall constitute one and the same instrument. A facsimile transmission, if any, of a party's signature shall be deemed an original signature and shall bind such party.

This Agreement is executed by the parties hereto as of the day and year first above written.

FRANK'S NURSERY AND CRAFTS, INC. FNC HOLDINGS, INC.	NAME OF PARTY IN INTEREST
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____
Date:_____	Date:_____